

NEW ZEALAND

Special Decisions or Action taken Re: Reporting, Including Urgent Action Procedure

CERD, CERD/C/SR.1671 (2004)

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
Sixty-fifth session

SUMMARY RECORD OF THE 1671st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 20 August 2004, at 10 a.m.

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PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES
AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

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Draft letter dated 20 August 2004 addressed to the Permanent Representative of New Zealand

6. The CHAIRMAN drew attention to a letter dated 20 August 2004 addressed to the Permanent Representative of New Zealand requesting urgent additional information concerning the Foreshore and Seabed Bill currently in the process of enactment in New Zealand.

7. Mr. CALI TZAY proposed that, in the first sentence of the second paragraph, the phrase "organizations representing indigenous groups" should be amended to read "organizations representing indigenous peoples".

8. Mr. ABOUL-NASR proposed that the word "allegedly" should be deleted from the same sentence.

9. Mr. HERNDL said that he would prefer to retain the original wording of the sentence, since it was not clear whether the organizations referred to represented all Maori or only certain groups.

10. Mr. PILLAI expressed support for Mr. Aboul-Nasr's proposal. The Committee was not stating categorically that the Foreshore and Seabed Bill discriminated against Maori. Rather, it was informing the Government that it had received reports to that effect. The word "allegedly" was therefore redundant.

11. Mr. AMIR pointed out that the Committee was acting in the context of article 15 of the Convention, which referred to peoples, not groups. He would prefer to use the former term.

12. Mr. THORNBERRY concurred with Mr. Cali Tzay: as a party to the Treaty of Waitangi,

Maori must be regarded as peoples, not groups. He also agreed that the word "allegedly" should be deleted.

13. Mr. de GOUTTES proposed that the words "indigenous groups" should be replaced by "Maori people" and that the words "the Bill allegedly discriminates" should be amended to read "the Bill discriminated".

14. Mr. KJAERUM pointed out that, in the last paragraph of the letter, the Committee reiterated its willingness to maintain a dialogue with the Government on the implementation of the Convention in New Zealand, whereas in a similar letter addressed to the Permanent Representative of Botswana it made an explicit offer of assistance. He was concerned that the first formulation was too vague. It was important to indicate that members would make themselves available for consultations on the Foreshore and Seabed Bill during the intersessional period. The Committee could not wait until its next session in March 2005 to pursue its dialogue with the State party, as the Bill might be adopted before the end of 2004.

15. Mr. AVTONOMOV expressed support for Mr. de Gouttes's proposal. Responding to Mr. Kjaerum's comments, he stressed that the two letters had been worded differently because the situations in New Zealand and Botswana were not the same.

16. Mr. ABOUL-NASR considered that the deadline of 31 August 2004 by which the Government of New Zealand was supposed to provide the information sought by the Committee was unrealistic.

17. Mr. PILLAI agreed with Mr. Kjaerum that the last paragraph of the letter did not convey any sense of urgency.

18. Mr. SHAHI said that he would welcome clarification concerning the means of maintaining the dialogue with the Government of New Zealand during the intersessional period.

19. Mr. AVTONOMOV said that the deadline was quite reasonable, the State party's representatives having already indicated their readiness to meet with members of the Committee the following week. As Mr. Kjaerum had stated, urgent action was required since the Bill had not yet been adopted, and there was still an opportunity for the Committee to influence the outcome.

20. The CHAIRMAN emphasized that no action would be taken on the matter before the Committee's next session. However, the Committee was willing to receive information from the Government in the meantime, and it was important to make that point in the letter. The Working Group on early warning measures and urgent action procedures had envisaged that such information could be transmitted to members through the secretariat.

21. Mr. de GOUTTES proposed that the Committee should request the Government to provide the information sought within one month.

22. Mr. KJAERUM expressed support for Mr. de Gouttes's proposal. He was concerned,

however, that no mechanism had been established for responding to information that required an immediate reaction. He proposed that the Committee could assign that task to the Chairman or to the coordinator for follow-up appointed under rule 65, paragraph 2, of the rules of procedure.

23. Mr. TANG Chengyuan said that the Committee should not presume to influence States parties' legislation. It could only give advice or make recommendations. He was satisfied with the text of the letter as it stood.

24. Mr. SHAHI said that he had reservations about Mr. Kjaerum's proposal to designate one member of the Committee to be responsible for follow-up on the matter during the intersessional period, as there were no precedents for delegating authority in that respect. He also objected to the use of the word "dialogue" in the last paragraph. It was hardly appropriate, since the Committee was merely requesting the Government of New Zealand to submit information.

25. Mr. AVTONOMOV said that the coordinator appointed under rule 65 of the rules of procedure was responsible for monitoring follow-up on the Committee's concluding observations and recommendations. He, too, would have reservations about the broadening of the coordinator's mandate. He would not object to the exchange of information with the Government of New Zealand during the intersessional period on condition that such information was transmitted to all members of the Committee through the secretariat.

26. The CHAIRMAN said that it was not a question of delegating authority or taking decisions between sessions. The Committee must, however, agree on a procedure whereby information could be exchanged with the Government of New Zealand following the closure of the session.

27. Mr. THORNBERRY suggested that the letter should be adopted and sent, following which the Committee could consider how to deal with the additional information provided by the State party.

28. The draft letter dated 20 August 2004 addressed to the Permanent Representative of New Zealand, as amended by Mr. de Gouttes, was adopted.

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CERD, A/60/18 (2005)

CHAPTER II. PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES

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18. The following decisions were adopted by the Committee under the early warning and urgent procedures at its sixty-sixth session:

Decision 1 (66) on the New Zealand Foreshore and Seabed Act 2004

1. The Committee has reviewed, under its early warning and urgent action procedure, the compatibility of the New Zealand Foreshore and Seabed Act 2004 with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, in the light of information received both from the Government of New Zealand and a number of Maori non-governmental organizations and taking into account its general recommendation XXIII (1997) on indigenous peoples.
2. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party at its 1680th meeting, on 25 February 2005, and also appreciates the State party's written and oral responses to its requests for information related to the legislation, including those submitted on 17 February and 9 March 2005.
3. The Committee remains concerned about the political atmosphere that developed in New Zealand following the Court of Appeal's decision in the *Ngati Apa* case, which provided the backdrop to the drafting and enactment of the legislation. Recalling the State party's obligations under article 2, paragraph 1 (*d*), and article 4 of the Convention, it hopes that all actors in New Zealand will refrain from exploiting racial tensions for their own political advantage.
4. While noting the explanation offered by the State party, the Committee is concerned at the apparent haste with which the legislation was enacted and that insufficient consideration may have been given to alternative responses to the *Ngati Apa* decision, which might have accommodated Maori rights within a framework more acceptable to both the Maori and all other New Zealanders. In this regard, the Committee regrets that the processes of consultation did not appreciably narrow the differences between the various parties on this issue.
5. The Committee notes the scale of opposition to the legislation among the group most directly affected by its provisions, the Maori, and their very strong perception that the legislation discriminates against them.

6. Bearing in mind the complexity of the issues involved, the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under articles 5 and 6 of the Convention.

7. The Committee acknowledges with appreciation the State party's tradition of negotiation with the Maori on all matters concerning them, and urges the State party, in a spirit of goodwill and in accordance with the ideals of the Waitangi Treaty, to resume dialogue with the Maori community with regard to the legislation, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment, where necessary.

8. The Committee requests the State party to monitor closely the implementation of the Foreshore and Seabed Act, its impact on the Maori population and the developing state of race relations in New Zealand, and to take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.

9. The Committee has noted with satisfaction the State party's intention to submit its fifteenth periodic report by the end of 2005, and requests the State party to include full information on the state of implementation of the Foreshore and Seabed Act in the report.

1700th meeting
11 March 2005